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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of)

Interconnection and Resale Obligations)
Pertaining to Commercial Mobile Radio)
Services)

CC Docket 94-54

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FEDERAL COMMUNICATIONS COMMISSION
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REPLY COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

AirTouch Communications, Inc. ("AirTouch") hereby submits its Reply Comments in response to issues raised in the above-captioned proceeding ("Second NPRM"). The great majority of commenters, including AirTouch, supported the Commission's tentative conclusions not to impose mandatory CMRS-to-CMRS interconnection or roaming obligations at this time. The arguments raised by these parties were extremely persuasive, and nothing stated by the commenters supporting strict regulatory requirements dictates a departure from the Commission's earlier findings.

These Reply Comments focus on two issues dealing with resale: (1) the reseller switch proposal, and (2) whether there is a need for imposition of a resale obligation on paging and narrowband PCS providers.

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I. The Reseller Switch Proposal Should Be Rejected

The reseller switch proposal, which would allow resellers to install their own switching equipment between the CMRS licensee's MTSO and the facilities of local exchange carriers and interexchange carriers, generated significant interest from numerous parties. The overwhelming majority of commenters, AirTouch included, agreed with the Commission's tentative conclusion not to impose the requirement.¹ In addition, they opposed the proposal on numerous grounds: added costs to CMRS licensees and consumers, additional burdens on the Commission, and technical infeasibility. The comments submitted by the relatively few reseller switch proponents offered nothing of consequence to counter any of these arguments.

In the Second NPRM, the Commission acknowledged that CMRS providers may have to incur costs to satisfy an unbundling requirement that would be necessitated by adoption of a switch-based resale scheme.² While the reseller switch proponents do not dispute that their proposal would require CMRS operators to unbundle service offerings and establish cost-based rates for each component of service,³ they fail to refute in any concrete fashion assertions that significant costs would be incurred by licensees in implementing these fundamental changes to their businesses.

¹ To clarify its earlier comments, AirTouch submits that, since there is no existing statutory obligation to provide interconnection to switch-based resellers, these entities' right to utilize the Section 208 complaint process would first necessitate an FCC order mandating such interconnection.

² Second NPRM at ¶ 96.

³ See e.g., Comments of Time Warner at 3.

For example, Connecticut Telephone and Communication Systems, Inc. (“Connecticut Telephone”) blithely asserts that the Commission should not be “overly impressed by carrier arguments concerning the allegedly excessive costs they will incur to unbundle their services,”⁴ but provides no support for its position. Time Warner’s discussion of the “cost” issue is similarly conclusory: “The truth is that switch-based interconnection is both technically feasible today and economically reasonable.”⁵ Like Connecticut Telephone, Time Warner provides no support for this assertion, contending only that the “Commission . . . gives far too much credence to expressions of concern by cellular carriers that reseller switch interconnection would impose costs on both the Commission and the cellular carriers.”⁶ Attempting to deflect the weakness of its argument, Time Warner asserts that cellular carriers “have not identified any specific costs to the consumer or to the Commission.”⁷ Cellular carriers have, in fact, demonstrated that costs would be incurred — the need to unbundle services and establish the cost of each element of service (on a going-forward basis), will be a complex and costly undertaking.⁸ Moreover, increasing a carrier’s costs of doing business in this manner would obviously be translated into higher costs for consumers.

⁴ Comments of Connecticut Telephone at 4-5.

⁵ Comments of Time Warner Communications at 5-6.

⁶ Id. at 2-3.

⁷ Comments of Time Warner at 4.

⁸ Sidestepping these critical points, Connecticut Telephone simply claims that “[o]nce a cellular licensee knows the cost of each component of service, there is no additional impediment to pricing it fairly to a reseller.” Comments of Connecticut Telephone at 4-5. Id.

The National Wireless Resellers Association (“NWRA”) takes a different approach. NWRA contends that the Commission should not be concerned with the economic feasibility of switch-based resale since the resellers have agreed to “bear all direct costs associated with the interconnection request.”⁹ As noted, this statement ignores entirely the significant costs that will be incurred by CMRS licensees in fundamentally readjusting their business practices to accommodate the desires of switch-based resellers.

The Commission was correct in its tentative assessment that “CMRS providers might have to incur costs to satisfy a requirement to unbundle their services and offer interconnection on the terms needed for switch-based resellers.”¹⁰ The supporters of switch-based resale have come forward with nothing that would suggest the Commission was mistaken.

The reseller switch proponents were equally unpersuasive in their efforts to overcome concerns regarding the added burden on the Commission that will result if their proposal is adopted. Time Warner asserts that “[r]ules governing switch-based resale would be straight-forward for the Commission to administer and for cellular carriers to implement.”¹¹ For support, Time Warner claims that the rules associated with cellular local exchange carrier interconnection have not been burdensome for the Commission, and it opines that the same can be expected in the reseller context. This argument again misses the mark. Considering that the CMRS industry is now largely

⁹ Comments of NWRA at 3.

¹⁰ Second NPRM at ¶ 96.

¹¹ Comments of Time Warner at 4.

deregulated, the added burden to the Commission will result from the transition to an industry driven by unbundled services and cost-based rates, and the need to administer the far more intrusive regulatory requirements associated with such operations. These added complexities will surely be more time-consuming to administer.

While there is also disagreement with respect to the issue of technical feasibility, the technical problems associated with switch-based resale were well documented by the commenters. AirTouch noted, for example, that

multiple interfaces and protocol connectors would require ongoing technical maintenance and support, increasing both labor costs and network vulnerability. Additionally, customers served by a reseller switch would need special accommodation for such features as law enforcement access for call interceptions, enhanced 911 call information, priority access calls, fraud controls, and some enhanced services.¹²

AT&T lists a host of other problems arising from use of the IS-41 protocol.¹³

In contrast, Time Warner claims to have devised a “viable” switch-based resale plan, and it points to a “detailed switch-based proposal” put together by another entity. There is no indication, however, that either of these proposals has been tested or that they would somehow resolve the many technical problems enumerated by the commenters opposed to switch-based resale. It is apparent that, at a minimum, serious questions remain regarding the technical feasibility of the reseller switch proposal.

One of the more critical deficiencies in the filings of the reseller switch proponents is the absence of a credible showing that adoption of their proposal will in

¹² Comments of AirTouch at 21.

¹³ Comments of AT&T at 30, and Declaration of Roderick Nelson attached as Exhibit 3 to AT&T Comments. See also Comments of Nextel at 16.

any way benefit the public. While it was contended that switch-based resale would “bring to subscribers numerous innovative features,”¹⁴ the truth is that every feature that consumers find attractive can and will be provided directly by the licensees themselves in response to competitive pressures from other CMRS licensees. The resellers, in essence, would have nothing special or unique to offer with regard to services.

The switch-based resellers also contend that their involvement will lead to lower prices. However, vigorous competition among the many CMRS licensees in each market will be more than adequate to assure that prices remain low. The fact is that switch-based resale will not result in reduced prices. Indeed, as noted, the contrary is more likely since at least some of the extensive costs associated with unbundling services would be passed on to consumers.

Adoption of the resellers switch proposal will be detrimental to the public interest in a number of other respects. For example, switch-based resale will create significant inefficiencies since every single call must still first be processed by the licensee’s switch. In addition, as noted in the comments, switch-based resale will cause a drain on licensee resources and therefore provide a disincentive to licensee investment, innovation and system expansion.¹⁵

¹⁴ Comments of Time Warner at 8.

¹⁵ See e.g., Comments of PCS PRIMECO, L.P. at 11.

II. The Commission Should Not Impose Resale Obligations On Paging and Narrowband PCS Providers

In the Second NPRM, the Commission tentatively concluded that the existing resale obligation applicable to cellular carriers should be extended to other CMRS providers. It sought comment, however, on “whether resale is unreasonable, unnecessary, or technically infeasible for specific classes of CMRS providers,” including paging operators.¹⁶ In particular, the Commission requested commenters to address “whether resale obligations are unnecessary for paging operators and whether permitting restrictions on the resale of paging services would violate the just and reasonable standard of Section 201(b), and the non-discrimination provisions of Section 202(a).”¹⁷

Consistent with the views of several other commenters,¹⁸ AirTouch argued in its Comments that the public interest would not be served by imposing mandatory resale obligations on paging and narrowband PCS licensees. First, AirTouch noted that resale is not needed to promote competition in an industry already populated with numerous competitors and with relatively few barriers to entry.¹⁹ Would-be resellers unable to reach agreement with a particular paging or narrowband PCS licensee could simply turn to one of the many other licensees in the market. The reseller could also apply for its own stations, given the limited barriers to entry. These factors underscore

¹⁶ Second NPRM at ¶ 87.

¹⁷ Id.

¹⁸ See, e.g., Comments of MobileMedia at 4-6; Paging Network at 4-6; Personal Communications Industry Association (“PCIA”) at 10-12; BellSouth at 7; AT&T at 27.

¹⁹ See Comments of AirTouch at 17-19.

why reseller participation in the marketplace has been accomplished without the need for mandatory resale obligations.²⁰ Finally, the competitive nature of the paging and narrowband PCS industry is sufficient to deter carriers from charging unjust or unreasonable rates or from engaging in discriminatory conduct against resellers. In addition, mechanisms are in place at the Commission to address alleged abuses if they occur.²¹

A number of commenters contend that resale obligations should be imposed on all CMRS providers. These commenters generally base their recommendations on the concept of regulatory parity, claiming that all CMRS providers must be treated the same. On several occasions, however, the Commission has drawn distinctions among various segments of the CMRS industry for purposes of regulation. Most importantly, the Commission's regulatory "forbearance analysis [has] focussed on the level of competition within individual categories of commercial mobile radio services"²² It would therefore be appropriate to treat the paging industry, which by any measure is subject to vigorous competition, differently than other CMRS industries for purposes of deciding whether a resale obligation should be imposed.

²⁰ See Comments of PCIA at 12; MobileMedia at 6.

²¹ See Comments of AirTouch at 18-19; PCIA at 14.

²² Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd. 7988, 8011 (1994). The Commission has also distinguished between narrowband and broadband services for purposes of the technical and operational requirements imposed, *id.* at 8052-53, and it also lumped paging and narrowband PCS services together for purposes of exclusion from the 45 MHz spectrum cap applicable to cellular, PCS and SMR services. *Id.* at 8111.

As noted by MobileMedia, "paging has flourished and consumers have benefitted without the imposition of mandatory resale requirements."²³ The adoption of such requirements at this time would amount to a "solution for which there is no problem."²⁴ The Commission, accordingly, should not impose resale obligations on paging and narrowband PCS providers.

A review of the comments leads decisively to the conclusion that adoption of the reseller switch proposal would entail significant costs for industry participants, the Commission and consumers, which clearly outweigh any minimal public interest benefits. The Commission should accordingly adopt its tentative conclusion not to adopt the reseller switch proposal at this time.

Respectfully submitted,

AIRTOUCH COMMUNICATIONS, INC.



By: Kathleen Q. Abernathy
David A. Gross
1818 N Street, N.W., Suite 800
Washington, D.C. 20036
(202) 293-3800

Its Attorneys

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²³ Comments of MobileMedia at 4.

²⁴ Id.

CERTIFICATE OF SERVICE

I, Donna L. McClain, hereby certify that on this 14th day of July, 1995, a copy of the foregoing "Reply Comments of AirTouch Communications, Inc." was served by first-class, United States Mail, postage prepaid, on the following:

Gene P. Belardi
MobileMedia Communications, Inc.
2101 Wilson Boulevard, Suite 935
Arlington, VA 22201

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
Nextel Communications, Inc.
800 Connecticut Ave. N.W., Ste. 1001
Washington, D.C. 20006

William L. Roughton, Jr.
PCS Primeco, L.P.
1310 N. Courthouse Road
Arlington, Virginia 22201

Mark J. Golden
PCIA
1019 19th Street, N.W.
Washington, D.C. 20036

Douglas L. Povich
W. Ashby Beal, Jr.
Kelly & Povich, P.C.
1101 30th St., N.W., Ste. 300
Washington, D.C. 20007
Counsel for Connecticut Telephone and
Communications Systems, Inc.

Mark C. Rosenblum
Robert J. McKee
Albert M. Lewis
295 N. Maple Ave., Rm. 2255F2
Basking Ridge, New Jersey 07920-1002
Attorneys for AT&T

Scott K. Morris
Cathleen A. Massey
1150 Connecticut Ave., N.W., 4th Fl.
Washington, D.C. 20036
Attorneys for AT&T

Richard Rubin
Steven N. Teplitz
Fleischman and Walsh, L.L.P.
1400 16th St., N.W.
Washington, D.C. 20036
Attorneys for Time Warner Communications

William B. Barfield
Jim O. Llewellyn
BellSouth Corporation
1155 Peachtree St., N.E.
Atlanta, Georgia 30309-3610

Charles P. Featherstun
David G. Richards
BellSouth Corporation
1133 21st Street, N.W., Ste. 900
Washington, D.C. 20036

David Walker
National Wireless Resellers Association
5850 Eubank, N.E., Suite B16
Albuquerque, New Mexico 87111



Donna L. McClain